

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

Impax Laboratories, Inc.,

Plaintiff,

v.

Shire LLC,

Defendant,

and

Teva Pharmaceuticals USA, Inc.,

Intervenor-Defendant.

Civ. No. 3:11-mc-80206-JSW (NJV)

**STIPULATION AND ORDER  
COMPELLING MCKESSON  
CORPORATION'S COMPLIANCE  
WITH SHIRE LLC'S SUBPOENA**

Hearing Date: October 11, 2011

Time: 11:00 AM

Courtroom: Eureka

Judge: Magistrate Judge Vadas

THIS MATTER comes before the Court on Shire LLC's ("Shire") Fed. R. Civ. P. 37 Motion to Compel McKesson Corporation's Compliance with Subpoena to produce documents and designate a corporate witness(es) for deposition in a civil action pending in United States District Court for the Southern District of New York, *Impax Laboratories, Inc. v. Shire LLC*, Civ. No. 1:10-cv-08386 (MGC) (AJP) (S.D.N.Y.) (the "New York litigation").

The parties, having come to an agreement, request that the Court enter the following Stipulation and Order:

1. McKesson Corporation ("McKesson") shall make best efforts to produce the following documents and things from its San Francisco, CA employees by October 7, 2011 and from all other McKesson employees by October 14, 2011. McKesson shall produce documents from January 1, 2009 to the present:

a. McKesson's communications with Shire, Impax and Teva regarding generic Adderall XR<sup>®</sup> and McKesson's internal documents (e.g., memoranda, e-mails) concerning those communications, including:

i. Offers from and negotiations with Shire, Impax and Teva, including pricing details (both offered and actual), discounts, rebates, incentives, etc. offered and/or paid by Shire, Impax and Teva;

1                   ii.     Forecasts exchanged with Shire, Impax and Teva; and  
2                   iii.     McKesson's internal documents concerning how or why it chose  
3 one supplier over another.

4                   b.     Documents concerning Impax's and Teva's inability to supply or  
5 interruptions/delays in its supply of generic Adderall XR, including cancellation of orders.

6                   c.     Data reflecting McKesson's purchases of branded and generic Adderall  
7 XR.

8                   d.     Data reflecting McKesson's inventory levels of branded and generic  
9 Adderall XR.

10                  e.     Documents concerning general shortages in the availability of branded  
11 and generic Adderall XR<sup>®</sup>.

12                  f.     Documents concerning any penalties or repercussions for Impax's  
13 inability to supply generic Adderall XR<sup>®</sup>, including loss of goodwill.

14                  g.     Documents concerning any restrictions placed on how much branded and  
15 generic Adderall XR McKesson could purchase and warehouse (i.e., would it purchase as much  
16 as it could, limited only by shelf space, tied to patient demand, etc.).

17                  2.     In connection with McKesson's search for documents responsive to the categories  
18 identified in paragraph 1, it is understood that McKesson will gather documents from the key  
19 company representatives that are associated with managing the purchase of branded and generic  
20 Adderall XR.

21                  3.     McKesson shall make its best efforts to make a corporate witness(es) available  
22 for deposition at a mutually acceptable time and place for deposition on or before October 31,  
23 2011 to testify as to the following topics:

24                  a.     The authenticity of documents produced in response to Shire's subpoena  
25 and this order ("Subject Documents").

26                  b.     McKesson's retention policies with respect to the Subject Documents.

27                  c.     McKesson's efforts to locate and produce the Subject Documents.  
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d. Whether the Subject Documents constitute records of regularly conducted activity according to Rule 803(6) of the Federal Rules of Evidence.

e. Each witness's education and work experience, including information about the witness's duties and responsibilities when working for or on behalf of McKesson.

f. McKesson's purchases of Adderall XR and generic Adderall XR, including McKesson's negotiations with Shire, Impax, and Teva and McKesson's decision to award "one-stop" status to Teva.

g. McKesson's inventory levels of Adderall XR and generic Adderall XR.

h. Shortages in the availability of branded and generic Adderall XR®.

i. Any penalties or repercussions, including loss of goodwill, suffered by Impax due to its inability to supply Adderall XR®.

j. Any restriction on how much branded or generic Adderall XR McKesson could purchase and warehouse.

k. Orders received from and sales by McKesson to its customers for branded and generic Adderall XR, including generic erosion and rates of generic purchasing.

IT IS SO STIPULATED AND ORDERED.

Dated: September 27, 2011

/s/ Peter W. Craigie

Peter W. Craigie, State Bar No. 99509  
Craigie, McCarthy & Clow  
540 Pacific Avenue  
San Francisco, California 94133  
Telephone: 415-732-7788  
Facsimile: 415-732-7783  
E-mail: peter@cmclawpartners.com

Edgar H. Haug  
Steven M. Amundson  
Michael F. Brockmeyer  
David A. Zwally  
David Herman  
John G. Taylor  
Frommer Lawrence & Haug LLP  
745 Fifth Avenue  
New York, New York 10151  
Telephone: 212-588-0800  
Facsimile: 212-588-0500

/s/ Steven Winick

Steven Winick, State Bar No. 160815  
Brian R. Blackman, State Bar No. 196996  
Sheppard, Mullin, Richter & Hampton LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: 415-434-9100  
Facsimile: 415-434-3947  
E-mail: shwinick@sheppardmullen.com  
E-mail: brblackman@sheppardmullen.com

Attorneys for Nonparty  
McKesson Corporation

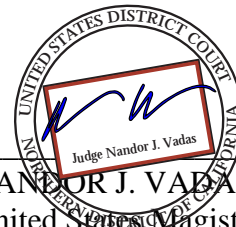
1 E-mail: ehaug@flhlaw.com  
E-mail: samundson@flhlaw.com  
2 E-mail: mbrockmeyer@flhlaw.com  
E-mail: dzwally@flhlaw.com  
3 E-mail: dherman@flhlaw.com  
E-mail: jtaylor@flhlaw.com

4 Attorneys for Defendant  
5 Shire LLC

6  
7 **PURSUANT TO STIPULATION IT IS SO ORDERED**

8  
9 Dated: September 27, 2011

10 By:



11 **NANDOR J. VADAS**  
12 United States Magistrate Judge  
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